रजिस्ट्री सं० डी० 221 Registered No. D. 221

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 65] नई दिल्ली, मंगलवार, दिसम्बर 10, 1968/अग्रहायण 19, 1890
No. 65] NEW DELHI, TUESDAY, DECEMBER 10, 1968/Agrahayana 19, 1890

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 10th December, 1968:—

I

BILL No. XLIV OF 1968

A Bill further to amend the Merchant Shipping Act, 1958.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. (*1*) This Act may be called the Merchant Shipping (Amendment) Act, 1968. Short title and commencement.

(*2*) This section and sections 2 to 14 (both inclusive) shall be deemed to have come into force on the 21st day of July, 1968 and the remaining sections of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different sections.

Amendment of section 3.

2. In section 3 of the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act), 44 of 1958.

(*a*) in clause (*5*),—

(*i*) in sub-clause (*a*), the words "or is deemed to have been declared" shall be omitted;

(*ii*) in sub-clause (*b*), for the words "article twenty-one", the words "article thirty-two" shall be substituted;

(*b*) for clause (*14*), the following clause shall be substituted, namely:—

'(*14*) "free board" means the distance measured vertically downwards, amidships, from the upper edge of the deck line to the upper edge of the related load line;';

(*c*) for clause (*20*), the following clause shall be substituted, namely:—

'(*20*) "Load Line Convention" means the International Convention on Load Lines signed in London on the 5th day of April, 1966, as amended from time to time;'.

Amendment of section 283.

3. In section 283 of the principal Act, the brackets and figure "(*1*)", in the first place where they occur, and sub-section (*2*), shall be omitted.

Insertion of new section 283A.

4. After section 283 of the principal Act, and before the sub-heading "construction of ships", the following section shall be inserted, namely:—

Definitions.

'283A. (*1*) In this Part, unless the context otherwise requires,—

(*a*) "existing ship" or "existing vessel" means a ship or vessel which is not a new ship or a new vessel,

(*b*) "new ship" or "new vessel" means a ship or vessel whose keel is laid or which is at a similar stage of construction on or after the material date as defined in sub-section (*2*).

(*2*) For the purposes of sub-section (*1*) "material date",—

(*i*) in relation to an Indian ship, means the 21st July, 1968;

(*ii*) in relation to a foreign ship belonging to a country to which the Load Line Convention applies, means the date as from which it is declared under section 283 that the

Government of such country has accepted the Load Line Convention or, as the case may be, that the said Convention has been applied to such country.'.

5. In section 310 of the principal Act,— Amendment of section 310.

(*a*) in sub-section (*2*), for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) any sailing vessel, being an existing vessel of less than one hundred and fifty tons gross, or a new vessel of less than twenty-four metres in length, and in either case employed in plying coastwise between ports situated within India, Pakistan, Burma and Ceylon;";

(*b*) in sub-section (*3*), for clause (*d*), the following clauses shall be substituted, namely:—

"(*d*) any coasting ship, being an existing ship of less than one hundred and fifty tons gross or a new ship of less than twenty-four metres in length:

Provided that any such ship does not carry cargo.

(*e*) any ship which embodies features of a novel kind, if the Central Government is satisfied that the application of the provisions of this Part relating to load lines to such a ship might seriously impede research into development of such features and their incorporation in ships and the Central Government and the Governments of the countries to be visited by the ship are satisfied that the ship complies with safety requirements which are adequate for the purposes for which the ship is intended and are such as to ensure the overall safety of the ship;

(*f*) any ship which is not normally engaged on voyages to ports outside India but which in exceptional circumstances is required to undertake such voyage if the Central Government is satisfied that the ship complies with safety requirements which are adequate for such voyage.".

6. In section 312 of the principal Act,— Amendment of section 312.

(*a*) in sub-section (*1*), for the words, figures and letters "after the 30th day of June, 1932", the words, figures and letters "on or after the 21st day of July, 1968" shall be substituted;

(*b*) in sub-section (*2*),—

(*i*) for the words, figures and letters "before the 1st day of July, 1932", the words, figures and letters "before the 21st day of July, 1968" shall be substituted;

(*ii*) for clause (*c*), the following clause shall be substituted, namely:—

"(*c*) the load lines are in the position required by clause (*e*) of sub-section (*1*).".

Insertion of new section 312A.

7. After section 312 of the principal Act, the following section shall be inserted, namely:—

Alterations after survey.

"312A. Where any survey under this Part of a ship for the purpose of assignment and marking of load lines has been completed, then, notwithstanding anything contained in this Act, the owner, agent or master of the ship shall not make or cause to be made any alteration in the structure, equipment, arrangements, material or scantlings covered by the survey without the prior written permission of the Central Government or a person authorised by that Government in this behalf.".

Amendment of section 316.

8. In section 316 of the principal Act, in sub-section (*1*), for clause (*a*), the following clauses shall be substituted, namely:—

"(*a*) in the case of an existing ship which is of one hundred and fifty tons gross or more or a new ship of twenty-four metres or more in length, and which in either case carries cargo or passengers, a certificate to be called "an international load line certificate";

(*aa*) in the case of a ship which is exempted under clause (*e*) or clause (*f*) of sub-section (*3*) of section 310, a certificate to be called "an international load line exemption certificate"; and".

Substitution of new section for section 317.

9. For section 317 of the principal Act, the following section shall be substituted, namely:—

Duration and cancellation of certificates.

"317. (*1*) Every certificate issued in respect of a ship under clause (*a*) or clause (*b*) of sub-section (*1*) of section 316 and every certificate issued under clause (*aa*) of that sub-section to a ship referred to in clause (*e*) of sub-section (*3*) of section 310 shall be in force for a period of five years from the date of its issue or for such shorter period as may be specified in the certificate but subject to the provisions of this Part, a new certificate may be issued in respect of such ship:

Provided that where it is not possible to issue such new certificate to any ship before the expiry of its existing certificate, the Central Government or any other person authorised by it to issue such certificate may, on being satisfied that no alterations affecting the ship's free board have been made, in the structure, equipment, arrangements, material or scantlings, after the last survey of the ship under sub-section (5), extend the validity of the existing certificate for such period not exceeding five months as the Central Government or such person may deem fit.

(2) Every certificate issued under clause (*aa*) of sub-section (1) of section 316 to a ship referred to in clause (*f*) of sub-section (3) of section 310 shall cease to be valid upon the completion of the voyage in respect of which such certificate was issued.

(3) Notwithstanding anything contained in the foregoing provisions of this section, any certificate issued in respect of a ship under sub-section (1) of section 316 shall cease to be valid when the ship ceases to be an Indian ship.

(4) The Central Government may, by order in writing cancel any certificate issued in respect of a ship under sub-section (1) of section 316 if it is satisfied that—

(*a*) material alterations such as would necessitate assignment of an increased free board have taken place in the hull or superstructure of the ship,

(*b*) the fittings and appliances for the protection of openings, the guard rails, freeing ports, or the means of access to the crew's quarters are not maintained in an effective condition,

(*c*) the structural strength of the ship is lowered to such an extent as to render the ship unsafe,

(*d*) the marking of the deck line and load lines on the ship have not been properly maintained:

Provided that no such order shall be made unless the person concerned has been given a reasonable opportunity to represent his case.

(5) The owner of every ship in respect of which any certificate has been issued under sub-section (1) of section 316 shall, so long as the certificate remains in force, cause the ship to be surveyed in the prescribed manner once at least in each year during the period commencing three months before and

ending three months after the anniversary date of issue of the certificate for the purpose of determining whether the certificate should, having regard to the provisions of sub-section (4), remain in force:

Provided that the Central Government may, if satisfied in any case for reasons to be recorded in writing that it is necessary or expedient so to do, extend by order in writing the time within which a ship shall be caused to be so surveyed.

(6) If the owner fails to cause the ship to be surveyed as aforesaid, the Central Government may, after giving the owner a reasonable opportunity to represent his case and without prejudice to any other action that may be taken under this Act in respect of such failure, cancel the certificate.

(7) Notwithstanding anything contained in sub-section (1), any international load line certificate issued or renewed under this Act before the date of publication of the Merchant Shipping (Amendment) Act, 1968, in the Official Gazette and in force on that date, shall continue to be in force,—

(a) for the unexpired portion of the period for which such certificate had been issued or, as the case may be, renewed; or

(b) for a period of two years from the commencement of this section,

whichever is shorter.

(8) Where any certificate has ceased to be valid or been cancelled under this section, the Central Government may require the owner or master of the ship to which the certificate relates to deliver up the certificate as it directs and the ship may be detained until such requirement has been complied with.

(9) On the survey of any ship in pursuance of this section, there shall be paid by the owner of the ship such fee as may be prescribed.".

Amendment of section 321.

10. Section 321 of the principal Act shall be re-numbered as sub-section (1) of that section, and—

(a) in sub-section (1) as so re-numbered, for the word "registered", the words "registered or to be registered" shall be substituted; and

(b) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) The Central Government shall, as soon as may be, after the issue of a certificate in respect of a ship under

sub-section (*1*), forward to the Government at whose request such certificate was issued a copy each of the certificate, the survey report used in computing the free board of the ship and of the computations."

Amendment of section 322.

11. In section 322 of the principal Act, for the words "load line certificate", in both the places where they occur, the words "load line certificate or, as the case may be, an international load line exemption certificate" shall be substituted.

Amendment of section 323.

12. In section 323 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) A surveyor may, at any reasonable time, go on board any ship (other than an Indian ship) carrying cargo or passengers and registered in a country to which the Load Line Convention applies, when such ship is within any port in India, for the purpose of demanding the production of any international load line certificate or, as the case may be, international load line exemption certificate for the time being in force in respect of the ship:

Provided that such ship is an existing ship of one hundred and fifty tons gross or more or a new ship of twenty-four metres or more in length

(*b*) in sub-section (*2*),—

(*i*) for clause (*c*), the following clause shall be substituted, namely:—

"(*c*) that no material alterations as would necessitate the assignment of an increased free board have taken place in the hull or superstructure of the ship;";

(*ii*) in clause (*d*), for the words "in as effective a condition as they were in when the certificate was issued", the words "in an effective condition" shall be substituted;

(*c*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) If a valid international load line exemption certificate is produced to the surveyor on demand made under sub-section (*1*) the surveyor's powers of inspecting the ship with respect to load lines shall be limited to seeing

that the conditions stipulated in the certificate are complied with.";

(*d*) in sub-section (*3*), sub-section (*4*) and sub-section (*5*), for the words "on any such inspection", the words, brackets and figures "on any inspection under sub-section (*2*) or, as the case may be, sub-section (*2A*)" shall be substituted;

(*e*) in sub-section (*6*), after the words "load line certificate", the words "or, as the case may be, international load line exemption certificate" shall be inserted.

Amendment of section 326.

13. In section 326 of the principal Act,—

(*a*) for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) no ship belonging to a country to which the Load Line Convention applies being an existing ship of one hundred and fifty tons gross or more or being a new ship of twenty-four metres or more in length shall be detained and no proceedings shall be taken against the owner or master thereof by virtue of the said section except after an inspection by a surveyor as provided by section 323; and";

(*b*) in clause (*b*), in sub-clause (*i*), after the words "load line certificate", the words "or, as the case may be, an international load line exemption certificate" shall be inserted.

Amendment of section 328.

14. In section 328 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words ", renewal and cancellation of Indian load line certificates", the words "and cancellation of Indian load line certificates or, as the case may be, international load line exemption certificates" shall be substituted;

(*ii*) in clause (a), for the words "any such certificate issued in respect of a ship of one hundred and fifty tons gross or more carrying cargo or passengers", the following shall be substituted, namely:—

"any such certificate issued in respect of a ship carrying cargo or passengers being an existing ship of one hundred and fifty tons gross or more or being a new ship of twenty-four metres or more in length";

(*b*) in sub-section (*2*), for the proviso, the following proviso shall be substituted, namely:—

"Provided that such direction shall not apply to any ship carrying cargo or passengers being an existing ship of one hundred and fifty tons gross or more or being a new ship of twenty-four metres or more in length if such ship is registered in a country to which the Load Line Convention applies, and is engaged in plying on voyages from or to any port in India to or from any port outside India.".

Amendment of heading of Part X.

15. In the heading to Part X of the principal Act, the words "LIMITATION OF" shall be omitted.

Insertion of new Part XA.

16. For section 352 of the principal Act, the following shall be substituted, namely:—

'PART XA

LIMITATION OF LIABILITY

Definitions.

352. In this Part, unless the context otherwise requires,—

(*a*) "claim" means a personal claim or property claim;

(*b*) "franc" means a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred;

(*c*) "Fund", in relation to a vessel means the limitation Fund constituted under section 352C;

(*d*) "liability", in relation to owner of a vessel, includes liability of the vessel herself;

(*e*) "occurrence" means an occurrence referred to in sub-section (*1*) of section 352A;

(*f*) "personal claim" means a claim resulting from loss of life or personal injury;

(*g*) "property claim" means any claim other than a personal claim arising from an occurrence.

Limitation of liability of owner for damages in respect of certain claims.

352A. (*1*) The owner of a sea-going vessel may limit his liability in accordance with the provisions of section 352B in respect of any claim arising from any of the following occurrences unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner—

(*a*) loss of life of, or personal injury to, any person being carried in the ship, or loss of, or damage to any property on board the ship;

(*b*) loss of life of, or personal injury to, any other person (whether on land or on water), loss of or damage to any other property or infringement of any rights—

(*i*) which is caused by the act, neglect or default of any person on board the ship for whose act, neglect or default the owner is responsible; or

(*ii*) which is caused by the act, neglect or default of any person not on board the ship for whose act, neglect or default the owner is responsible:

Provided that the owner shall be entitled to limit his liability in respect of any claim arising out of any act, neglect or default as is referred to in sub-clause (*ii*) only when the act, neglect or default is one which occurs in the navigation or the management of the vessel or in the loading, carriage or discharge of cargo or in the embarkation, carriage or disembarkation of its passengers.

(*2*) The burden of proving that the occurrence giving rise to a claim against the owner of a vessel did not result from his actual fault or privity shall be on the owner.

(*3*) Nothing in this section shall apply to—

(*a*) any obligation or liability imposed by any law relating to the removal of wreck and arising from or in connection with the raising, removal or destruction of any vessel which is sunk, stranded or abandoned (including anything which may be on board such vessel) and any obligation or liability arising out of damage caused to harbour works, navigation and navigable waterways;

(*b*) claims for salvage or to claims for contribution in general average;

(*c*) any claim by the master or a member of the crew of the vessel or any servant of the owner who is on board the vessel or whose duties are connected with the vessel (including any claim by the legal representative of such master, member of the crew or servant) if the contract of service between the owner and such master or member of the crew or servant is governed by the law of any foreign country and that law either does not set any limit to the liability in respect of such claims or sets a limit exceeding that set to it by section 352B.

(4) Any action on the part of the owner of a vessel to limit his liability under sub-section (1) shall not merely by reason of such action constitute an admission of liability.

(5) An owner of a vessel shall be entitled to limit his liability under sub-section (1) in respect of any occurrence even in cases where his liability arises, without proof of negligence on the part of the owner or of persons for whose conduct he is responsible, by reason of his ownership, possession, custody or control of the vessel.

Limits of liability.

352B. (1) The amounts to which the owner of a vessel may limit his liability under sub-section (1) of section 352A shall be—

(a) where the occurrence has given rise to property claims only, an aggregate amount not exceeding the amount equivalent to one thousand francs for each ton of the vessel's tonnage;

(b) where the occurrence has given rise to personal claims only, an aggregate amount not exceeding the amount equivalent to three thousand and one hundred francs for each ton of the vessel's tonnage;

(c) where the occurrence has given rise both to personal claims and property claims, an aggregate amount not exceeding the amount equivalent to three thousand and one hundred francs for each ton of the vessel's tonnage of which the first portion of the amount equivalent to two thousand and one hundred francs for each ton of the vessel's tonnage shall be exclusively appropriated to the payment of personal claims and of which the second portion of the amount equivalent to one thousand francs for each ton of the vessel's tonnage shall be appropriated to the payment of property claims:

Provided that in cases where the first portion is insufficient to pay the personal claims in full, the unpaid balance of such claims shall rank rateably with the property claims for payment against the second portion of the amount.

Explanation.—For the purposes of this sub-section the tonnage of a vessel of less than three hundred tons shall be deemed to be three hundred tons.

(2) The limits set by sub-section (1) to the liabilities mentioned therein shall apply to the aggregate of such liabilities

which are incurred on any distinct occasion, and shall so apply in respect of each distinct occasion without regard to any liability incurred on another occasion.

(3) For the purposes of this section a vessel's tonnage shall be determined in such manner as the Central Government may, by general or special order, specify.

(4) The Central Government may from time to time by order determine the amounts which for the purposes of this section are to be taken as equivalent to three thousand and one hundred and one thousand francs respectively.

Limitation Fund and consolidation of claims against owners.

352C. (1) Where any liability is alleged to have been incurred by the owner of a vessel in respect of claims arising out of an occurrence and the aggregate of the claims exceeds or is likely to exceed the limits of liability of the owner under section 352B, then the owner may apply to the High Court for the setting up of a limitation Fund for the total sum representing such limits of liability.

(2) The High Court to which the application is made under sub-section (1) may determine the amount of the owner's liability and require him to deposit such amount with the High Court or furnish such security in respect of the amount as in the opinion of the Hight Court is satisfactory and the amount so deposited or secured shall constitute a limitation Fund for the purposes of the claims referred to in sub-section (1) and shall be utilised only for the payment of such claims.

(3) After the Fund has been constituted, no person entitled to claim against it shall be entitled to exercise any right against any other assets of the owner in respect of his claim against the Fund, if that Fund is actually available for the benefit of the claimant.

(4) Subject to the provisions of this Part, the High Court may distribute the amount constituting the Fund rateab'y amongst the several claimants and may stay any proceedings pending in any other court in relation to the same matter and may proceed in such manner and subject to such rules of the High Court as to making persons interested parties to the proceedings, and as to the exclusion of any claims which do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the High Court thinks fit.

(5) Where the owner establishes that he has paid in whole or in part any claim in respect of which he can limit his liability under section 352A, the High Court shall place him in the same position and to the same extent in relation to the Fund as the claimant whose claim he has paid.

(6) Where the owner has established that he may at a later date be required to pay in whole or in part, any of the claims under this Part, which could be settled from the Fund, the High Court may notwithstanding the foregoing provisions of this section order that a sufficient sum may be provisionally set aside for the purpose to enable the owner to enforce his claim against the Fund at a later date in accordance with the provisions of sub-section (4).

(7) If the owner is entitled to make a claim against a claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Part shall only apply to the balance, if any.

Release of ship, etc.

352D. (1) Where a vessel or other property is detained in connection with a claim which appears to the High Court to be founded on a liability to which a limit set by section 352B applies, or security is given to prevent or obtain release from such detention, the High Court may, and in the circumstances mentioned in sub-section (3) of this section shall, order the release of the vessel, property or security if the conditions specified in sub-section (2) are satisfied; and where the release is ordered, the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the High Court to adjudicate upon the claim.

(2) The conditions referred to in sub-section (1) are—

(a) that security which in the opinion of the High Court is satisfactory (in this section referred to as "guarantee") has previously been given whether in India or elsewhere, in respect of the said liability or any other liability incurred on the same occasion and the High Court is satisfied that if the claim is established, the amount for which the guarantee was given or such part thereof as corresponds to the claim will be actually available to the claimant; and

(b) that either the guarantee is for an amount not less than the said limit or further security is given which, toge-

ther with the guarantee, is for an amount not less than that limit.

(3) The circumstances referred to in sub-section (1) are that the guarantee was given in a port which, in relation to the claim, is the relevant port (or as the case may be, a relevant port) and that port is in a convention country.

(4) For the purposes of this section—

(a) a guarantee given by the giving of security in more than one country shall be deemed to have been given in the country in which security was last given;

(b) any question whether the amount of any security is (either by itself or together with any other amount) not less than any limit set by section 352B shall be decided as at the time at which the security is given;

(c) where part only of the amount for which a guarantee was given will be available to a claimant that part shall not be taken to correspond to his claim if any other part may be available to a claimant in respect of a liability to which no limit is set as mentioned in sub-section (1).

(5) In this section—

(a) "convention country" means any country in respect to which the International Convention relating to the Limitation of the Liability of owners of sea-going ships signed in Brussels on the 10th day of October, 1957, is in force and includes any country to which the Convention extends by virtue of article 14 thereof;

(b) "relevant port", in relation to any claim, means a port where the event giving rise to the claim occurred, or if that event did not occur in that port, the first port of call after the event occurred and includes in relation to a claim for loss of life or personal injury or for damage to cargo, the port of disembarkation or discharge.

Application to ships in course of completion or construction, etc.

352E. The provisions of this Part relating to limitation of liability of owners shall extend and apply to the owners, builders or other persons having an interest in any vessel built in any port or place in India from and including the launching of such vessel until the registration thereof in accordance with the provisions of this Act, as they apply in relation to the owner of a vessel registered under this Act.

Application of this Part to charterer, manager, etc., of a vessel.

352F. (*1*) Subject to the provisions of sub-section (*2*), the provisions of this Part relating to limitation of liability of an owner of a vessel in respect of claims arising out of an occurrence shall apply to the charterer, manager and operator of the vessel and to the master, members of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment in the same manner as they apply in relation to the owner:

Provided that the total limits of liability of the owner and all other persons referred to in this sub-section in respect of personal claims and property claims arising on a distinct occasion shall not exceed the amounts determined in accordance with the provisions of section 352B.

(*2*) The master or a member of the crew of a vessel may limit his liability under sub-section (*1*) even if the occurrence which gives rise to a claim against him resulted from the actual fault or privity of the master and the members of the crew or any one or more of them:

Provided that where the master or a member of the crew is at the same time the owner, co-owner, charterer, manager or operator of a vessel, the provisions of this sub-section shall only apply where such occurrence resulted from any act, neglect or default committed by the master or, as the case may be, the member of the crew in his capacity as master or, as the case may be, as a member of the crew.".

Insertion of new Part XIA.

17. After Part XI of the principal Act, the following Part shall be inserted, namely:—

'PART XIA

PREVENTION OF POLLUTION OF THE SEA BY OIL

Commencement and application.

356A. (*1*) The provisions of this Part shall take effect from such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions in respect of tankers and ships other than tankers.

(*2*) They shall apply to and in relation to—

(*a*) tankers of one hundred and fifty tons gross or more; and

(*b*) other ships of five hundred tons or more.

Definitions.

356B. In this Part, unless the context otherwise requires,—

(*a*) "Convention" means the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, signed in London on the 12th day of May, 1954, as amended from time to time;

(*b*) "discharge", in relation to oil or oily mixture, means any discharge or escape howsoever caused;

(*c*) "mile" means a nautical mile of 1,852 metres;

(*d*) "oil" means,—

(*i*) crude oil,

(*ii*) fuel oil,

(*iii*) marine diesel oil conforming to such specifications as may be prescribed,

(*iv*) lubricating oil;

(*e*) "oily mixture" means a mixture with an oil content of hundred parts or more in a million parts of the mixture;

(*f*) "oil reception facilities", in relation to a port, means facilities for enabling vessels using the port to discharge or deposit oil residues;

(*g*) "prohibited zone" means any such sea area as may be specified in the rules made under section 356J to be a prohibited zone for the purposes of this Part;

(*h*) "ship" means any sea-going vessel of any type whatsoever, including floating craft, whether self-propelled or towed by another vessel, making a sea voyage;

(*i*) "tanker" means a ship in which the greater part of the cargo space is constructed or adapted for the carriage of liquid cargoes in bulk and which is not, for the time being, carrying a cargo other than oil in that part of its cargo space.

Prohibitions as to discharge of oil or oily mixture.

356C. (*1*) No oil or oily mixture shall be discharged from an Indian tanker or other ship within any of the prohibited zones or from a foreign tanker or other ship within the prohibited zone adjoining the territories of India.

(*2*) The discharge of oil or oily mixture from an Indian ship, other than a tanker or from a foreign ship other than a

tanker while such foreign ship is at any place or port in India, shall be made as far as practicable from land.

(3) No oil or oily mixture shall be discharged anywhere at sea from an Indian ship, being a ship of twenty thousand tons gross tonnage or more for which the building contract was entered into on or after the coming into force of this sub-section;

Provided that this sub-section shall not apply in any case where by reason of special circumstances it is impracticable or unreasonable to retain the oil or oily mixture in the ship and the master of the ship reports, as soon as may be, after such discharge the fact in the prescribed form and manner to the Director-General.

Prohibition not to apply in certain cases.

356D. Nothing in section 356C shall apply to—

(*a*) the discharge of oil or oily mixture from a ship for the purpose of securing the safety of a ship, preventing damage to a ship or cargo or saving life at sea;

(*b*) the escape of oil or of oily mixture resulting from a damage to a ship or unavoidable leakage, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the leakage for the purpose of preventing or minimising the escape;

(*c*) the discharge of residue arising from the purification or clarification of fuel oil or lubricating oil when such discharge is made as far from land as is practicable.

(*d*) the discharge from the bilges of a ship of oily mixture during the period of twelve months following the date on which this clause comes into force and after the expiration of such period of oily mixture containing no oil other than lubricating oil which has drained or leaked from the machinery spaces in the ship.

Equipment in ships to prevent oil pollution.

356E. For the purpose of preventing or reducing discharges of oil and oily mixtures into the sea, the Central Government may make rules requiring Indian ships to be fitted with such equipment and to comply with such other requirements (including requirement for preventing the escape of fuel oil or heavy diesel oil into bilges) as may be prescribed.

Oil record book.

356F. (*1*) Every Indian tanker and every other Indian ship which uses oil as fuel shall maintain on board the tanker or such other ship an oil record book.

(2) The form and manner in which the oil record book shall be maintained, the nature of the entries to be made therein, the time and circumstances in which such entries shall be made, the custody and disposal thereof and all other matters relating thereto shall be such as may be prescribed having regard to the provisions of the Convention.

Inspection and control of ships to which the Convention applies.

356G. (1) A surveyor or any person appointed in this behalf may, at any reasonable time, go on board a ship to which any of the provisions of this Part apply, for the purposes of—

(a) ensuring that the prohibitions, restrictions and obligations imposed by or under this Part are complied with;

(b) satisfying himself about the adequacy of the measures taken to prevent the escape of oil or oily mixture from the ship;

(c) ascertaining the circumstances relating to an alleged discharge of oil or oily mixture from the ship in contravention of the provisions of this Part; and

(d) inspecting the oil record book.

(2) The surveyor or any such person may, if necessary, make, without unduly delaying the ship, a true copy of any entry in the oil record book of the ship and may require the master of the ship to certify the copy to be a true copy and such copy shall be admissible as evidence of the facts stated therein.

Information regarding contravention of the provisions of the Convention.

356H. (1) If, on report from a surveyor or other person authorised to inspect a vessel under section 356G, the Central Government is satisfied that any provision of the Convention has been contravened anywhere by a foreign ship being a ship to which the provisions of the Convention apply, it shall transmit particulars of the alleged contravention to the Government of the country to which the ship belongs.

(2) On receipt of information from the Government of any country which has ratified the Convention that an Indian ship has contravened any provision of the Convention, the Central Government shall investigate the matter and if satisfied that any provision of this Part or any rule made thereunder has been contravened, take appropriate action against the owner or master and intimate such Government of the action so taken.

Oil reception facilities at ports in India.

356I. (*1*) Notwithstanding anything contained in any other law for the time being in force, in respect of every port in India, the powers of the port authority shall include the power to provide oil reception facilities.

(*2*) A port authority providing oil reception facilities or a person providing such facilities by arrangement with the port authority, may make charges for the use of the facilities at such rates and may impose such conditions in respect of the use thereof as may be approved, by notification in the Official Gazette, by the Central Government in respect of the port.

(*3*) Where the Central Government is satisfied that there are no oil reception facilities at any port in India or that the facilities available at such port are not adequate for enabling ships calling at such port to comply with the requirements of the Convention, the Central Government may, after consultation with the port authority in charge of such port, direct by order in writing such authority to provide or arrange for the provision of such oil reception facilities as may be specified in the order.

(*4*) The Central Government may, by notification in the Official Gazette, specify the ports in India having oil reception facilities in accordance with the requirements of the Convention.

Explanation.—For the purpose of this section, "port authority" means,—

(*a*) in relation to any major port to which the provisions of the Major Ports Trust Act, 1963, apply, the Board of Trustees constituted in respect of that port under that Act;

38 of 1963.

(*b*) in relation to any other port, the Conservator of the Port, within the meaning of section 7 of the Indian Ports Act, 1908.

15 of 1908.

Power to make rules.

356J. (*1*) The Central Government may, having regard to the provisions of the Convention, make rules to carry out the purposes of this Part.

(*2*) In particular and without prejudice to the generality of the provisions of sub-section (*1*), such rules may—

(*a*) prescribe the specifications of marine diesel oil for the purposes of clause (*d*) of section 356B;

(*b*) specify the areas which shall be deemed to be prohibited zones for the purposes of this Part;

(c) prescribe the form and manner in which the oil record book shall be maintained, the nature of the entries to be made therein, the time and circumstances in which such entries shall be made, the custody and disposal thereof and all other matters relating thereto; and

(d) prescribe the manner in which investigation may be made by the Central Government for the purpose of sub-section (2) of section 356H.'.

Amendment of section 436.

18. In section 436 of the principal Act, in sub-section (2), in the table,—

(a) in item 102, for the brackets and figure "(5)", in both the places where they occur, the brackets and figure "(8)" shall be substituted;

(b) after item 115A, the following items shall be inserted, namely:—

Serial No.	Offences	Section of this Act to which offence has reference	Penalties
115B	(a) If oil or oily mixture is discharged in contravention of sub-section (1) of section 356C—		
	(i) where such discharge is from an Indian or a foreign tanker;	356C(1)	The master of the tanker shall be liable to fine which may extend to two thousand rupees.
	(ii) where such discharge is from an Indian ship not being a tanker or a foreign ship not being a tanker.	356C(1)	The master of the ship or, if the ship is unmanned, the person in charge of the operation shall be liable to fine which may extend to one thousand rupees.
	(b) If oil or oily mixture is discharged from an Indian ship other than a tanker or from a foreign ship other than a tanker in contravention of sub-section (2) of section 356C.	356C(2)	The master of the ship or, if the ship is unmanned, the person in charge of the operation shall be liable to fine which may extend to one thousand rupees.
	(c) If oil or oily mixture is discharged from an Indian ship in contravention of sub-section (3) of section 356C.	356C(3)	The master of the ship shall be liable to fine which may extend to one thousand rupees.

Serial No.	Offences	Section of this Act to which offence has reference	Penalties
	(*d*) If the master of the ship fails to make the report referred to in the proviso to sub-section (*3*) of section 356C.	356C(*3*)-proviso	The master of the ship shall be liable to fine which may extend to five hundred rupees.
115C	If an Indian ship is not fitted with equipment prescribed under section 356E	356E	The owner, master or agent shall be liable to fine which may extend to two thousand rupees and in addition, to a fine which may extend to twenty rupees for every day during which the offence continues after conviction.
115D	(*a*) If the master of an Indian tanker or other ship fails to maintain an oil record book as required by section 356I or contravenes any rule (other than a rule referred to in (*b*) below) made under that section.	356F(*1*), 356F(2)	Fine which may extend to two thousand rupees
	(*b*) If any person wilfully destroys or mutilates or renders illegible or prevents the making of, any entry in the oil record book or makes or causes to be made a false entry in such book in contravention of any rule made under section 356F.	356I	Imprisonment which may extend to six months or fine which may extend to five thousand rupees or both.".

Substitution of new section for section 460A.

19. For section 460A of the principal Act, the following section shall be substituted, namely:—

Removal of difficulties.

"460A. (*1*) If any difficulty arises in giving effect to the provisions of this Act, in so far as they relate to the Safety Convention or to the Load Line Convention or to the Convention referred to in clause (*a*) of section 356B, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty and giving effect to the provisions of such Convention:

Provided that no order shall be made under this section after the expiry of three years from the date of publication of the Merchant Shipping (Amendment) Act, 1968, in the Official Gazette.

(2) Every order made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions.".

Certain contraventions, etc., not to be offences.

20. Notwithstanding the retrospective operation of sections 2 to 14 (both inclusive) of this Act no contravention of, or no failure to comply with, any of the provisions of the principal Act as amended by those sections shall render any person guilty of any offence if such contravention or failure—

(*i*) relates either to any provision inserted in the principal Act by any of the said sections, or to any existing provision thereof, as amended by any of the said sections, and

(*ii*) occurred on or after the 21st day of July, 1968 and before the date of publication of this Act in the Official Gazette.

STATEMENT OF OBJECTS AND REASONS

This Bill seeks to amend the Merchant Shipping Act, 1958, for the purpose of giving effect to three International Conventions relating to Merchant Shipping, namely, the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (as amended in 1962), the International Convention on Limitation of Liability of Owners of Sea-going Ships, 1957, and the International Convention on Load Lines, 1966. The International Convention on Load Lines, 1966, has already been ratified by the Government of India and has come into force on the 21st July, 1968. The other two Conventions have yet to be ratified by the Government of India.

2. The concept of load lines has two facets. Firstly, it provides for marking of free boards, *i.e.*, the distance measured vertically downward from the deck line which must at all times and under all conditions, while the ship is afloat, remain free of water line. Secondly, it provides for marking of load lines indicating how far the ship could be permitted to submerge in water as a result of loading cargo in different seasons and different zones. The need for controlling free boards in the interest of safety of life at sea cannot be over-emphasised. The first international agreement on the subject was reached at the International Conference on Load Lines, 1930, and the existing provisions of the Merchant Shipping Act relating to load lines are based upon the provisions of the Convention adopted by this Conference. With a view to ensuring better safety of life and property on sea and increasing freight earnings by shipping which has been made possible by the improvements in the technique of ship-building and the progressive shift of emphasis from smaller to larger ships, an agreement was reached at the Second International Conference on Load Lines held in 1966 in London. The International Convention on Load Lines, 1966, which seeks to replace the 1930 Convention on the subject is the outcome of this agreement. By and large, the 1966 Convention tends to liberalise the free board requirements so as to permit deeper loading of the ships as compared to the corresponding provisions of the 1930 Convention. In particular, the 1966 Convention substantially increases the period of tropical loading both in the Arabian Sea and the Bay of Bengal thus permitting deeper loading of ships in this area during a greater part of the year. The provisions of the Con-

vention are therefore in the larger interests of our expanding merchant shipping, as their freight earnings will improve and this in turn would result in their earning more foreign exchange. Clauses 2 to 14 (both inclusive) of the Bill seek to implement the provisions of this Convention.

3. The Merchant Shipping Act, 1958, does not contain any provision regarding prevention of pollution of the sea by oil. The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, aims at prohibiting ships from discharging oil or oily mixture within about hundred miles from the shores of any country which is a party to the Convention. Though the problem of pollution of the sea by oil is not very acute, so far the sea areas around India are concerned, it is necessary to guard against the problem before it assumes serious proportions as a result of the increasing tendency to resort more and more to oil as fuel for ships and the operation of a number of oil refineries in our country involving the movement of large quantities of crude and refined oil to and from Indian ports. Further, Indian ships engaged in international trade visit regularly most of the countries which have ratified the International Convention for the Prevention of Pollution of the Sea by Oil and unless they comply with the Convention requirements, they may become liable for heavy penalties for contravention of the national laws of such countries. Clause 17 of the Bill seeks to give effect to the provisions of the Convention by inserting a new Part on the subject in the Merchant Shipping Act, 1958.

4. Section 352 of the Merchant Shipping Act, 1958, provides for the limitation of liability of an owner of a ship in respect of any loss of life or personal injury to any person or any loss of or damage to any property or rights of any kind caused without his actual fault or privity. In the interest of shipping and commerce generally, it is desirable that a ship-owner's liability in respect of claims for loss of life or personal injury or claims for damage to property is limited to a reasonable amount. Under the Continental system, the extent of limitation was based on the value of the ship at the end of the voyage whereas the British practice provided for a fixed rate per ton of the ship's tonnage. The International Convention on Limitation of Liability of Owners of Sea-going Ships, 1957, attempts to evolve a uniform international system of law in this respect and it has already been ratified by Governments of nine States which account for over 34 per cent. of world tonnage. According to the provisions of the Convention, it will come into

force six months after one more country ratifies it. Though the monetary limits set to liability by the Convention are substantially higher than those provided in section 352 of the Act, in view of the fact that Indian vessels are undertaking voyages to almost all countries of the world, it would be to the advantage of our shipping interests to give effect to the provisions of the Convention. Accepting the Convention would relieve Indian ship-owners of admitting claims for amounts in excess of what is permitted under the Convention. The more important deviations from the provisions of the said section 352 which would become necessary as a result of the acceptance of the Convention may be summarised as follows:—

(*1*) The limits set to liability under the section have to be increased in the case of claims for loss of life or personal injury from rupees two hundred to an amount equivalent to three thousand one hundred gold francs; in the case of claims for loss of or damage to property from rupees one hundred for each ton of ship's tonnage to an amount equivalent to one thousand gold francs; and in the case of claims for both loss of life or personal injuries and loss of or damage to property, from an aggregate amount of rupees two hundred for each ton of the ship's tonnage to an aggregate amount equivalent to three thousand one hundred gold francs. (A franc is approximately equivalent to fifty paise.)

(*2*) The benefit of the right to limit which is available under the said section 352 only to owners of ships will have to be made available to the charterer, manager and operator of the ship, and to the master, members of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment.

(*3*) New provisions will have to be made for the constitution of a limitation fund on an application made by a ship-owner in that behalf.

Clause 16 of the Bill seeks to give effect to the provisions of this Convention.

5. The Notes on clauses explain in detail the various provisions of the Bill.

NEW DELHI;
The 21st November, 1968. V. K. R. V. RAO.

NOTES ON CLAUSES

Clause 1.—Clauses 2 to 14 (both inclusive) of the Bill seek to give effect to the International Convention on Load Lines, 1966 which has come into force on the 21st July, 1968. Hence it is necessary to give retrospective effect to these provisions.

Clause 2.—Sub-clause (2) of this clause seeks to make two changes of a consequential nature in the definition of the expression "country to which the Load Line Convention applies". The words "or is deemed to have been declared" appearing in the definition are no longer necessary as all notifications regarding acceptance or denunciation of the 1966 Load Lines Convention will be issued under the principal Act itself. (*See* notes on clause 3.) The other change which the sub-clause seeks to make in the definition is for the purpose of substituting the reference to article 21 of the 1930 Load Line Convention by a reference to the corresponding provision of the 1966 Convention.

Clause 3.—The principal Act which was enacted in 1958 had to provide for the saving of declarations relating to acceptance|denunciation of the 1930 Load Line Convention made by other countries and notified by the Government under the Indian Merchant Shipping Act, 1923. As all similar declarations in respect of the Load Lines Convention, 1966 will be made under the principal Act itself, sub-section (2) of section 283 is no longer necessary. Accordingly this clause seeks to omit that sub-section.

Clause 4.—The application of the Load Lines Convention, 1966 to ships and other vessels depends upon the length of the vessel in the case of new ships or vessels, that is to say, ships or vessels whose keel is laid or which is at a similar stage of construction on or after the commencement of that Convention. In the case of other ships and vessels, that is, existing ships and vessels, the application of the Convention is as under the 1930 Load Line Convention based upon the tonnage of the ship or vessel. Hence it is necessary to define the expressions "new ship", "new vessel", "existing ship" and "existing vessel".

Clause 5.—*Sub-clause* (*a*).—Sub-section (2) (*a*) of section 310 of the principal Act provides for exemption of sailing vessels of less than 150 tons gross. The 1966 Convention provides for exemption in respect of existing sailing vessels of less than 150 tons gross and new sailing vessels of less than 24 metres in length. To give effect to this, it is proposed to substitute a new clause (*a*) for existing clause (*a*) of section 310(2).

Sub-clause (*b*).—Sub-section (3) of section 310 of the principal Act empowers the Central Government to exempt certain types of

ships from the application of the provisions relating to Load Lines. The 1966 Convention provides for similar exemptions with the difference that in the case of coasting ships the old criterion of the ship being less than 150 tons gross is continued to existing ships and a new criterion, namely, of the ships being less than 24 metres in length is made applicable in the case of new ships. Further the Convention also provides for exemption being granted in respect of ships which embody features of a novel kind and any particular ship which is required to undertake an international voyage in exceptional circumstances. To give effect to these provisions of the 1966 Convention, it is proposed to substitute for clause (*d*) of section 310(3) of the principal Act, three new clauses.

Clause 6.—Sub-section (*1*) of section 312 of the principal Act deals with the survey and marking of deck lines and load lines in respect of a ship the keel of which was laid after the date of commencement of the 1930 Load Line Convention. Sub-section (2) of the same section deals with the survey and marking of deck line and load lines in respect of a ship the keel of which was laid before the commencement of the said Convention. The Load Lines Convention, 1966 makes a similar distinction between a ship the keel of which was laid after the commencement of that Convention and a ship the keel of which was laid before such commencement. Sub-sections (*1*) and (2) are being amended to give effect to this distinction.

The opportunity is being availed of to delete the reference to tables used by the Board of Trade in the United Kingdom on the 31st day of December 1906 occurring in clause 312(2)(c) as there are no longer any ships on the Indian Register with free boards computed on the basis of the said tables.

Clause 7.—Except in cases where the prior permission in writing of the appropriate authorities has been taken, the Load Lines Convention, 1966, prohibits the making of any alterations in the structure, equipment, arrangements, material or scantlings of a ship, after it has been surveyed for the purposes of assignment and marking of load lines. New section 312A seeks to give effect to this requirement.

Clause 8.—This clause seeks to substitute two new clauses (*a*) and (*aa*) for clause (*a*) of section 316(1) of the principal Act. New clause (*a*) provides for the issue of international load lines certificates to existing ships of one hundred and fifty tons gross or over and to new ships of twenty-four metres or more in length. New clause (*aa*) provides for the issue of an international load lines exemption certificate to a ship with novel features or to any ship which is not normally engaged on international voyages but

which is required, under exceptional circumstances, to undertake a single international voyage (*vide* clause 5 and notes thereon).

Clause 9.—This clause seeks to substitute a new section 317 for existing section 317 of the principal Act. The new section seeks to give effect to the various provisions of the Load Lines Convention, 1966, relating to duration, extension and cancellation of load lines certificates.

The provisions of the Load Lines Convention, 1966, relating to duration, extension and cancellation of load lines certificates are, subject to some minor exceptions, similar to those made by the Load Line Convention, 1930. Thus while a certificate issued under the 1930 Convention can be renewed, a certificate issued under the 1966 Convention cannot be renewed and upon its expiry, a fresh certificate has to be obtained. Further the 1966 Convention provides for the issue of international load lines exemption certificates (*vide* clauses 5 and 8 and notes thereon).

Clause 10.—Section 321 of the principal Act gives effect to a requirement of the Load Line Convention, 1930, according to which a Government of a country which is a party to that Convention may issue an international load line certificate to a ship registered in any other country which is a party to that Convention if a request in that behalf is made by such other country. The Load Lines Convention, 1966, contains a similar requirement subject to two modifications: first, such a certificate may be issued even in respect of ships to be registered and secondly whenever such a certificate is issued, a copy of such certificate together with a copy of survey report used in computing the free board of the computations should be forwarded to the Government of the country at whose request such certificate is issued. This clause seeks to give effect to these modifications.

Clause 11.—The amendments are of a consequential nature.

Clause 12.—*Sub-clause* (*a*).—The new sub-section (*1*) which this sub-clause seeks to substitute for existing sub-section (*1*) of section 322 of the principal Act, is, except for certain changes of a consequential nature, the same as the existing sub-section.

Sub-clause (*b*).—The amendments are essentially of a verbal nature and are for the purpose of conforming to the language of the relevant provisions of the Load Lines Convention, 1966.

Sub-clause (c).—New sub-section (*2A*) which this sub-clause seeks to insert in section 323 of the principal Act deals with the powers of

inspection of surveyors in respect of ships holding valid international load line exemption certificates.

Sub-clauses (*d*) *and* (*e*).—The amendments are of a consequential nature.

Clauses 13 *and* 14.—The amendments are of a consequential nature.

Clause 15.—The amendment is of a drafting nature.

Clause 16.—This clause seeks to substitute a new Part XA (containing new sections 352 to 352F) for section 352 of the principal Act and is intended to give effect to the provisions of the International Convention relating to the Limitation of Liability of Owners of Sea-going Ships, 1957 (hereinafter referred to as the Limitation of Liability Convention).

New section 352.—This section defines the various expressions used in new Part XA in accordance with the relevant provisions of the Limitation of Liability Convention.

New section 352A.— This section specifies the claims in respect of which an owner of a sea-going vessel may limit his liability under the provisions of the new Part XA and the claims in respect of which he cannot limit his liability under that Part. The owner may limit his liability only in respect of claims arising out of any occurrence referred to in sub-section (1) of the section provided that such occurrence has not resulted from his actual fault or privity. The burden of proving that the occurrence has not resulted from his actual fault or privity is sought to be placed on the owner himself. It may be mentioned that the right of the owner to limit his liabilities arising out of any act, neglect or default of any person not on board the ship but for whose act, neglect or default, the owner is responsible is restricted only to claims arising out of any such act, neglect or default as has taken place in the navigation or management of the vessel, loading, carriage, or discharge of cargo and embarkation, carriage and disembarkation of passengers.

Sub-section (*3*) of the new section specifies the claims in respect of which an owner of a vessel cannot limit his liability.

New section 352B.—This section specifies the amounts to which the owner of a vessel may limit his liability. Following the Limitation of Liability Convention, the amounts are expressed in terms of francs and power is sought to be given to the Central Government to specify from time to time the equivalent amounts in terms of our cur-

rency. The limits of liability specified in the section apply in respect of claims arising on a single occasion and claims arising on two or more distinct occasions cannot be combined. The limits of liability have to be calculated with reference to the tonnage of the vessel concerned and where the tonnage of the vessel is less than 300 tons, the vessel will be treated for purposes of such computation as of 300 tons.

The limits set to liability under this section are considerably more than the limits provided for in existing section 352. The following table brings out the differences between the existing limits and the new limits. (The limits have to be calculated both under the existing section and the new section with reference to the tonnage of the ship):—

Nature of claims	Rate under existing Section	Rate under new section
1. Where all the claims are personal claims (*i.e.*, claims arising out of loss of life or personal injury).	Rs. 200 per ton	3100 francs per ton (Roughly Rs. 1550).
2. Where all the claims are property claims.	Rs. 100 per ton	1000 francs per ton (Roughly Rs. 500).
3. Where there are both personal and property claims.	Rs. 200 per ton subject to personal claims having priority over other claims to the extent of Rs. 100 per ton and ranking rateably with other claims in respect of the balance.	3100 francs (Roughly Rs. 1550) per ton subject to personal claims having priority over other claims to the extent of 2100 francs (Roughly Rs. 1050) per ton and ranking rateably with other claims in respect of the balance.

New section 352C.—The need for limitation of liability in respect of claims against an owner of a vessel in accordance with the provisions of the proposed Part arises only in those cases where the liability in respect of the claims exceeds the limits of liability provided for in the Part (*i.e.*, in new section 352B). New section 352C provides that in such a case, the owner may apply to the High Court for determining the amount of his liability in accordance with the limits of liability under new section 352B. Upon the determination of the owner's liability, the owner has to deposit such amount with the court or furnish satisfactory security in respect of the same and the

amount so deposited or secured constitutes the limitation fund. Upon the constitution of the limitation fund as aforesaid, the claimants concerned cannot exercise any right against any other assets of the owner if the fund is actually available for meeting their claims.

New section 352*D*.—This section seeks to provide for the cases in which any vessel or property which may have been detained in connection with a claim founded upon a liability which may be limited under the provisions of the new Part XA, may be entitled to be released after adequate security has been given. The section also provides for the circumstances in which such release should, as a matter of course, be ordered.

New section 352*E*.—This section corresponds to sub-section (2) of existing section 352 of the principal Act.

New section 352*F*.—This section seeks to extend the benefit available to the owner of a vessel under the new Part XA to the charterer, manager and operator of the vessel as also to the master, members of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment and makes it clear that the total limits of liability of the owner and all the other persons referred to in respect of claims arising out of a distinct occasion shall not exceed the amounts determined in accordance with the limits provided in new section 352B.

Clause 17.—This clause seeks to insert a new Part XIA (containing new sections 356A to 356J) in the principal Act and is intended to give effect to the provisions of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (hereinafter referred to as the 1954 Convention).

New section 356*A*.—The 1954 Convention has not yet come into force in respect of India as it has yet to be ratified by the Government of India. Further according to the Convention, some of its provisions are to become operative on the expiry of different periods from the date of its commencement. Accordingly sub-section (1) of section 356A seeks to empower the Central Government to bring the provisions of that Part into force on different dates.

In accordance with the provisions of the 1954 Convention, sub-section (2) of new section 356A seeks to restrict the application of the provisions of new Part XIA to tankers of 150 tons gross or more and other ships of 500 tons gross or more.

New section 356B.—The definitions of "discharge", "mile", "oil", "oily mixture", "ship" and "tanker", are based upon the definitions of those expressions in the 1954 Convention.

Prohibited zone.—The expression "prohibited zone" is used in the new Part XIA to indicate the areas of the sea in which discharge of oil or oily mixture shall not, subject to certain exceptions, be made. The 1954 Convention specifies all sea areas within 50 miles from the nearest land to be prohibited zones. The Convention also specifies certain areas extending more than 50 miles from the nearest land but not extending more than 100 miles in some cases and 150 miles in some other cases as prohibited zones. Some of the prohibited zones specified in the Convention become effective only when the Convention comes into force in respect of the country for whose benefit the prohibited zone is specified. Further the Government of any country which is a party to the Convention may propose reduction of any zone off the coast of any of its territory or the extension of any such zone (which extends to less than 100 miles) to a maximum of 100 miles from the nearest land along any such coast. Hence prohibited zones may vary from time to time. Accordingly "prohibited zones" for the purposes of new Part XIA are left to be specified by rules under new section 356J.

New section 356*C*.—This section seeks to give effect to the various prohibitions and restrictions as to discharge of oil or oily mixture by tankers and other ships in prohibited zones.

New section 356*D*.—This section seeks to provide for certain exceptions to the prohibitions under new section 356C.

New section 356*E*.—This is self-explanatory.

New section 456*F*.—The 1954 Convention requires every tanker or other ship which uses oil as fuel to maintain on board the tanker or such other ship an oil record book for the purpose of maintaining a record of various operations involving discharge of oil from such tanker or ship. New section 356F seeks to give effect to these requirements of the Convention.

New section 356*G*.—This section provides for inspection and, control of ships to which the 1954 Convention applies.

New section 356*H*.—This is self-explanatory.

New section 356*J*.—This section seeks to empower the various port authorities in India to provide for oil reception facilities and to make charges for the use of the facilities at such rates as may be approved by the Central Government by notification in the Official Gazette. The section also seeks to empower the Central Government to give directions to port authorities to provide necessary oil reception facilities.

New section 356J.—This section seeks to empower the Central Government to make rules for carrying out the purposes of new Part XIA.

Clause 18.—This clause seeks to amend section 436 of the principal Act to provide for penalties for contravention of the various new provisions.

Clause 19.—This clause seeks to substitute a new section for section 460A of the principal Act and it provides for removal of difficulties in giving effect to the provisions of the Act in so far as they relate to the various Conventions referred to therein.

Clause 20.—This is self-explanatory.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Several provisions of the International Convention on Load Lines, 1966, and the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, relate to matters of detail.

The powers available under existing section 311 of the principal Act are sufficiently wide to give effect to the aforementioned provisions of the Load Lines Convention, 1966, and the Bill accordingly does not seek to make any amendment to that section.

New sections 356E and 356J, which clause 17 of the Bill seeks to insert in the principal Act, are intended to empower the Central Government to make rules for giving effect to such of the provisions of the Convention for the Prevention of Pollution of the Sea by Oil, 1954, as pertain to matters of detail. New section 356E seeks to empower the Central Government to make rules requiring Indian ships to be fitted with such equipment and to comply with such other requirements as may be specified in the rules for the purpose of preventing or reducing discharges of oil and oily mixtures into the sea. New section 356J seeks to empower the Central Government to make rules for carrying out the purposes of new Part XIA relating to prevention of pollution of the sea by oil. The matters in respect of which rules may be made under the section include, *inter alia,* the specifications of marine diesel oil for the purposes of the new Part, the sea areas which shall be deemed to be prescribed zones for the purposes of the new Part, the form and manner in which the oil record book required under new section 356F, shall be maintained, and the manner in which investigations may be made on receipt of complaints in respect of contraventions by Indian ships of the Convention for Prevention of Pollution of the Sea by Oil.

Thus the matters in respect of which rules may be made under the new sections 356E and 356J pertain to matters of detail or procedure. As such, the delegation of legislative power is of a normal character.

II

Bill No. XLV of 1968

A Bill to provide for the registration of architects and for purposes connected therewith.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short extent and commencement.

1. (1) This Act may be called the Architects Act, 1968.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "architect" means a person qualified to design and supervise the erection of any building;

(*b*) "Council" means the Architect's Registration Council constituted under section 3;

(*c*) "Indian Institute of Architects" means the Indian Institute of Architects registered under the Societies Registration Act, 1860; 21 of 1860

(*d*) "recognised qualification" means any qualification in architecture for the time being included in the Schedule;

(*e*) "register" means the register of architects maintained under section 23;

(*f*) "registered architect" means a person whose name is for the time being entered in the register;

(*g*) "regulation" means a regulation made under this Act by the Council;

(*h*) "rule" means a rule made under this Act by the Central Government.

CHAPTER II

ARCHITECTS' REGISTRATION COUNCIL

Constitution of Council.

3. (*1*) The Central Government shall, by notification in the Official Gazette, constitute, with effect from such date as may be specified in the notification, a Council to be known as the Architects' Registration Council, which shall be a body corporate, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and may by that name sue or be sued.

(*2*) The head office of the Council shall be at Delhi or at such other place as the Central Government may, by notification in the Official Gazette, specify.

(*3*) The Council shall consist of the following members, namely:—

(*a*) five registered architects possessing recognised qualifications elected by the Indian Institute of Architects from among its members;

(*b*) two persons nominated by the All India Council for Technical Education established by the Resolution of the Government of India in the Ministry of Education No. F. 16-10/44-E.III, dated the 30th November, 1945;

(*c*) five persons elected from among themselves by heads of architectural institutions in India imparting full-time instruction for recognised qualifications;

(*d*) the Chief Architects in the Ministries of the Central Government to which the Government business relating to defence and railways has been allotted and the head of the Architectural Organisation in the Central Public Works Department, *ex-officio*;

(*e*) one person nominated by the Central Government;

(*f*) an architect to the Government of each State or an architect in the service of that Government nominated by that Government; and

(*g*) one person nominated by the Institution of Engineers (India) from among its members.

(*4*) Notwithstanding anything contained in clause (*a*) of sub-section (*3*), the Central Government may, pending the preparation of the register, nominate to the first Council persons referred to in the said clause (*a*) out of persons who are eligible for registration in the register and such persons shall hold office for such period as the Central Government may, by notification in the Official Gazette, specify.

President and Vice-President of Council.

4. (*1*) The President and the Vice-President of the Council shall be elected by the members of the Council from among themselves:

Provided that on the first constitution of the Council and until the President is elected, a member of the Council nominated by the Central Government in this behalf shall discharge the functions of the President.

(*2*) An elected President or Vice-President shall hold office for a term of three years or till he ceases to be a member of the

Council, whichever is earlier, but subject to his being a member of the Council, he shall be eligible for re-election;

Provided that—

(*a*) the President or the Vice-President may, by writing under his hand addressed to the Vice-President or the President, as the case may be, resign his office;

(*b*) the President or the Vice-President shall, notwithstanding the expiry of his term of three years, continue to hold office until his successor enters upon his office.

(*3*) The President and the Vice-President of the Council shall exercise such powers and discharge such duties as may be prescribed by Regulations.

Mode of elections.

5. Elections under this Chapter shall be conducted in such manner as may be prescribed by rules, and where any dispute arises regarding any such election, it shall be referred to the Central Government whose decision thereon shall be final.

Term of office and casual vacancies.

6. (*1*) Subject to the provisions of this section, an elected or nominated member shall hold office for a term of three years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is later.

(*2*) An elected or nominated member may, at any time, resign his membership by writing under his hand addressed to the President, or in his absence to the Vice-President, and the seat of such member shall thereupon become vacant.

(*3*) A member shall be deemed to have vacated his seat—

(*i*) if he is absent without excuse, sufficient in the opinion of the Council, from three consecutive ordinary meetings of the Council; or

(*ii*) in the case where he has been elected under clause (*a*) of sub-section (*3*) of section 3, if he ceases to be a registered architect; or

(*iii*) in the case where he has been elected under clause (*c*) of sub-section (*3*) of section 3, if he ceases to hold his appointment as the head of an institution referred to in the said clause.

(4) A casual vacancy in the Council shall be filled by fresh election or nomination, as the case may be, and the person so elected or nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was elected or nominated.

(5) Members of the Council shall be eligible for re-election or re-nomination.

Vacancies in Council not to invalidate action taken.

7. No act or proceeding of the Council shall be invalid merely by reason of—

(a) any vacancy in, or defect in the constitution of, the Council, or

(b) any defect in the election or nomination of a person acting as a member thereof, or

(c) any irregularity in procedure not affecting the merits of the case.

Disabilities.

8. A person shall not be eligible for election or nomination as a member of the Council, if he—

(a) is an undischarged insolvent; or

(b) has been convicted by a competent court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years.

Meetings of Council.

9. (1) The Council shall meet at least once in every six months at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by regulations.

(2) Unless otherwise prescribed by regulations, nine members of the Council shall form a quorum, and all the acts of the Council shall be decided by a majority of the members present and voting.

(3) In the case of an equal division of votes, the President or, in his absence, the Vice-President or, in the absence of both, the member presiding over the meeting, shall have a second or casting vote.

The Executive Committee and other Committees.

10. (1) The Council shall constitute from among its members an Executive Committee, and may also constitute other committees for such general or special purposes as the Council deems necessary to carry out its functions under this Act.

(2) The Executive Committee shall consist of the President and the Vice-President of the Council who shall be members *ex-officio* and five other members who shall be elected by the Council from among its members.

(3) The President and the Vice-President of the Council shall be the Chairman and Vice-Chairman respectively of the Executive Committee.

(4) A member of the Executive Committee shall hold office as such until the expiry of his term as a member of the Council but subject to his being a member of the Council, he shall be eligible for re-election.

(5) In addition to the powers and duties conferred and imposed on it by this Act, the Executive Committee shall exercise such powers and discharge such duties as may be prescribed by regulations.

Fees and allowances to President, Vice-President and members.

11. The President, the Vice-President and other members of the Council shall be entitled to such fee and allowances as the Council may, with the previous sanction of the Central Government, fix in this behalf.

Officers and employees of Council and emoluments and their remuneration.

12. (1) The Council shall—

(a) appoint a Registrar who shall act as its Secretary and who may also act, if so decided by the Council, as its treasurer;

(b) appoint such other officers and employees as the Council deems necessary to enable it to carry out its functions under this Act;

(c) with the previous sanction of the Central Government, fix the pay and allowances and other conditions of service of officers and employees of the Council.

(2) Notwithstanding anything contained in clause (a) of sub-section (1), for the first three years from the first constitution of the Council, the Registrar of the Council shall be a person appointed by the Central Government, who shall hold office during the pleasure of the Central Government.

(3) All the persons appointed under this section shall be the employees of the Council.

Finances of Council.

13. (1) There shall be established a Fund under the management and control of the Council into which shall be paid all moneys received by the Council and out of which shall be met all expenses and liabilities properly incurred by the Council.

(2) The Council may invest any money for the time being standing to the credit of the Fund in any Government security or in any other security approved by the Central Government.

(3) The Council shall keep proper accounts of the Fund distinguishing capital from revenue.

(4) The annual accounts of the Council shall be subject to audit by an auditor to be appointed annually by the Council.

(5) As soon as may be practicable at the end of each year, but not later than the thirtieth day of September of the year next following, the Council shall cause to be published in the Gazette of India a copy of the audited accounts and the report of the Council for that year and copies of the said accounts and report shall be forwarded to the Central Government.

(6) The Fund shall consist of—

(a) all money received from the Central Government by way of grant, gift or deposit;

(b) any sums received under this Act whether by way of fee or otherwise.

Recognition of qualifications granted by authorities in India.

14. (1) The qualifications included in Part I of the Schedule shall be recognised qualifications for the purposes of this Act.

(2) Any authority in India which grants an architectural qualification not included in Part I of the Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend Part I of the Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the Schedule against such architectural qualification declaring that it shall be a recognised qualification only when granted after a specified date.

Recognition of architectural

15. (1) The architectural qualifications granted by authorities outside India which are included in Part II of the Schedule shall be recognised qualifications for the purposes of this Act.

qualifications granted by authorities in countries with which there is a scheme of reciprocity.

(2) The Council may enter into negotiations with an authority in any country outside India which by the law of such country is entrusted with the maintenance of a register of architects, for the settling of a scheme of reciprocity for the recognition of architectural qualifications, and in pursuance of any such scheme, the Central Government may, by notification in the Official Gazette, amend Part II of the Schedule so as to include therein the architectural qualification which the Council has decided should be recognised, and any such notification may also direct that an entry shall be made in the Schedule against such architectural qualification declaring that it shall be a recognised qualification only when granted after a specified date.

(3) The qualifications included in Part II of the Schedule shall not entitle persons other than citizens of India to registration unless they have been declared to be recognised qualifications in accordance with the provisions of sub-section (2).

Powers of Central Government to amend Schedule.

16. Notwithstanding anything contained in sub-section (2) of section 14 or sub-section (2) of section 15, the Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend any part of the Schedule by directing that an entry be made therein in respect of any architectural qualification declaring that it shall be a recognised qualification only when granted before a specified date.

Effect of recognition.

17. Notwithstanding anything contained in any other law, but subject to the provisions of this Act, any recognised qualification shall be a sufficient qualification for enrolment in the register.

Power to require information as to courses of study and examinations.

18. Every authority in India which grants a recognised qualification shall furnish such information as the Council may, from time to time, require as to the courses of study and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification.

Inspection of examinations.

19. (1) The Executive Committee shall, subject to regulations, if any, made by the Council, appoint such number of inspectors as it may deem requisite to inspect any college or institution where architectural education is given or to attend any examination held by any college or institution for the purpose of recommending to the Central Government recognition of architectural qualifications granted by that college or institution.

(2) The Inspectors shall not interfere with the conduct of any training or examination, but shall report to the Executive Committee on the adequacy of the standards of architectural education including staff, equipment, accommodation, training and such other facilities as may be prescribed by regulations for giving such education or on the sufficiency of every examination which they attend.

(3) The Executive Committee shall forward a copy of such report to the college or institution and shall also forward copies with remarks, if any, of the college or institution thereon, to the Central Government.

Withdrawal of recognition.

20. (1) When upon report by the Executive Committee it appears to the Council—

(a) that the courses of study and examination to be undergone in, or the proficiency required from the candidates at any examination held by, any college or institution, or

(b) that the staff, equipment, accommodation, training and other facilities for staff and training provided in such college or institution,

do not conform to the standards prescribed by regulations the Council shall make a representation to that effect to the Central Government.

(2) After considering such representation the Central Government may send it to the State Government of the State in which the college or institution is situated and the State Government shall forward it along with such remarks as it may choose to make to the college or institution, with an intimation of the period within which the college or institution may submit its explanation to the State Government.

(3) On receipt of the explanation or where no explanation is submitted within the period fixed, then, on the expiry of that period, the State Government shall make its recommendations to the Central Government.

(4) The Central Government, after making such further inquiry, if any, as it may think fit, may, by notification in the Official Gazette, direct that an entry shall be made in the appropriate part of the Schedule against the said architectural qualification declaring that it shall be a recognised qualification only when granted before a specified date and the Schedule shall be deemed to be amended accordingly.

Minimum standard of architectural education.

21. The Council may prescribe the minimum standards of architectural education required for granting recognised qualifications by colleges or institutions in India

Professional conduct.

22. (*1*) The Council may by regulations prescribe standards of professional conduct and etiquette and a code of ethics for registered architects.

(*2*) Regulations made by the Council under sub-section (*1*) may specify which violations thereof shall constitute infamous conduct in any professional respect, that is to say, professional misconduct, and such provision shall have effect notwithstanding anything contained in any law for the time being in force.

CHAPTER III

REGISTRATION OF ARCHITECTS

Preparation and maintenance of register.

23. (*1*) The Central Government shall, as soon as may be, cause to be prepared in the manner hereinafter provided a register of architects for India.

(*2*) The Council shall upon its constitution assume the duty of maintaining the register in accordance with the provisions of this Act.

(*3*) The register shall include the following particulars, namely:—

(*a*) the full name with date of birth, nationality and residential address of the registered architect;

(*b*) his qualification for registration, and the date on which he obtained that qualification and the authority which conferred it;

(*c*) the date of his first admission to the register;

(*d*) his professional address; and

(*e*) such further particulars as may be prescribed by rules.

First preparation of register.

24. (*1*) For the purposes of preparing the register of architects for the first time, the Central Government shall, by notification in the Official Gazette, constitute a Registration Tribunal consisting of three persons who have, in the opinion of the Central Government the knowledge of, or experience in, the profession of architects; and

the Registrar appointed under section 12 shall act as Secretary of the Tribunal.

(2) The Central Government shall, by the same or a like notification, appoint a date on or before which application for registration, which shall be accompanied by the fee to be prescribed by rules, shall be made to the Registration Tribunal.

(3) The Registration Tribunal shall examine every application received on or before the appointed day and if it is satisfied that the applicant is qualified for registration under section 25, shall direct the entry of the name of the applicant in the register.

(4) The first register so prepared shall thereafter be published in such manner as the Central Government may direct and any person aggrieved by a decision of the Registration Tribunal expressed or implied in the register so published may, within thirty days from the date of such publication, appeal against such decision to an authority appointed by the Central Government in this behalf by notification in the Official Gazette.

(5) The authority appointed under sub-section (4) shall, after giving the person affected an opportunity of being heard and after calling for relevant records, make such order as it may deem fit.

(6) The Registrar shall amend, where necessary, the register in accordance with the decisions of the authority appointed under sub-section (4).

(7) Every person whose name is entered in the register shall be issued a certificate of registration in the form as may be prescribed by rules.

(8) Upon the constitution of the Council, the register shall be given into its custody, and the Central Government may direct that all or any specified part of the application fee for registration in the first register shall be paid to the credit of the Council.

Qualification for entry in register.

25. (1) A person shall be entitled on payment of the fee to be prescribed by rules to have his name entered in the register, if he resides or carries on the profession of architect in India and if he—

(a) holds a recognised qualification, or

(b) does not hold such a qualification but, being a citizen of India, has been engaged in practice as an architect as his principal means of livelihood for a period of not less than five years

prior to the date appointed under sub-section (2) of section 24 and is a member of the Indian Institute of Architects:

Provided that no person other than a citizen of India shall be entitled to registration by virtue of a qualification—

(a) specified in Part I of the Schedule unless by the law and practice of a country outside India to which such person belongs, citizens of India holding architectural qualification registrable in that country are permitted to enter and practise the profession of architect in such country, or

(b) specified in Part II of the Schedule unless the Central Government has, in pursuance of a scheme of reciprocity or otherwise, declared that qualification to be a recognised qualification.

Procedure for subsequent registration.

26. (1) After the date appointed for the receipt of applications for registration in the first register of architects, all applications for registration shall be addressed to the Registrar of the Council and shall be accompanied by such fee as may be prescribed by rules.

(2) If upon such application the Registrar is of opinion that the applicant is entitled to have his name entered in the register he shall enter thereon the name of the applicant:

Provided that no person, whose name has under the provisions of this Act been removed from the register, shall be entitled to have his name entered in the register except with the approval of the Council.

(3) Any person whose application for registration is rejected by the Registrar may, within three months of the date of such rejection appeal to the Council, who shall decide the same.

(4) Upon entry in the register of a name under this section, the Registrar shall issue a certificate of registration in the form as may be prescribed by rules.

Renewal fees.

27. (1) The Central Government may, by notification in the Official Gazette, direct that for the retention of a name in the register after the 31st day of December of the year following the year in which the name is first entered in the register, there shall be paid annually to the Council such renewal fee as may be prescribed by rules and where such direction has been made, such renewal fee shall be due to be paid before the first day of April of the year to which it relates.

(2) Where the renewal fee is not paid before the due date, the Registrar shall remove the name of the defaulter from the register:

Provided that a name so removed may be restored to the register on such conditions as may be prescribed by rules.

(3) On payment of the renewal fee, the Registrar shall in the manner to be prescribed by rules, endorse the certificate of registration accordingly.

Entry of additional qualification.

28. A registered architect shall, on payment of the fee as may be prescribed by rules, be entitled to have entered in the register any further recognised qualification which he may obtain.

Removal from register.

29. (1) The Council may, by order, remove from the register the name of any architect—

(a) from whom a request has been received to that effect, or

(b) who has died since the last publication of the register.

(2) Subject to the provisions of this section, the Council may order that the name of any architect shall be removed from the register where it is satisfied, after giving him a reasonable opportunity of being heard and after such further inquiry, if any, as it may think fit to make,—

(a) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact; or

(b) that he has been convicted of any offence which, in the opinion of the Council, involves moral turpitude; or

(c) that he is an undischarged insolvent; or

(d) that he has been adjudged by a competent court to be of unsound mind.

(3) An order under sub-section (2) may direct that any architect whose name is ordered to be removed from a register shall be ineligible for registration under this Act either permanently or for such period of years as may be specified.

(4) An order under sub-section (2) shall not take effect until the expiry of three months from the date thereof.

(5) A person whose name has been removed from the register under this section or under sub-section (2) of section 27 or where such person is dead, his legal representative as defined in section 2 of the Code of Civil Procedure, 1908, shall forthwith surrender his certificate of registration to the Registrar, and the name so removed shall be published in the Official Gazette. 5 of 1908.

Procedure in inquiries relating to misconduct.

30. (1) When on receipt of a complaint made to it, the Council is of opinion that any registered architect has been guilty of professional mis-conduct which, if proved, will render him unfit to practise as an architect, the Council may hold an inquiry in such manner as may be prescribed by rules.

(2) After holding the enquiry under sub-section (1) and after hearing the architect, the Council may, by order, reprimand the said architect or suspend him from practice as an architect or remove his name from the register or pass such other order as it thinks fit.

Appeal against removal from register.

31. A person aggrieved by an order made under sub-section (2) of section 29 or under section 30 may, within thirty days from the date thereof, appeal to the Central Government and the order of the Central Government upon such appeal shall be final.

Restoration to register.

32. The Council may, at any time, for reasons appearing to it to be sufficient and subject to the approval of the Central Government, order that upon payment of such fee as may be prescribed by rules, the name of the person removed from the register shall be restored thereto.

Issue of duplicate certificates.

33. Where it is shown to the satisfaction of the Registrar that a certificate of registration has been lost or destroyed, the Registrar may, on payment of such fee as may be prescribed by rules, issue a duplicate certificate in the form prescribed by rules.

Printing of register.

34. As soon as may be after the 1st day of April in each year, the Registrar shall cause to be printed copies of the register as it stood on the said date and such copies shall be made available to persons applying therefor on payment of such fee as may be prescribed by rules and shall be evidence that on the said date the persons whose names are entered therein were registered architects.

Effect of registration.

35. (1) Any reference in any law for the time being in force to an architect shall be deemed to be a reference to an architect registered under this Act.

(2) No plan or certificate in respect of any building required by or under any law from an architect shall be valid unless the person signing it is registered as an architect under this Act.

(3) After the expiry of one year from the date appointed under sub-section (2) of section 24, a person who is not registered in the register shall not, except with the sanction of the Central Government, hold any appointment as an architect under the Central or State Government or in any school, college, university or other institution which is supported wholly or partially from public or local funds or in any institution which is recognised by the Central or State Government.

CHAPTER IV

MISCELLANEOUS

Penalty for falsely claiming to be registered.

36. If any person whose name is not for the time being entered in the register falsely represents that it is so entered, or uses in connection with his name or title any words or letters reasonably calculated to suggest that his name is so entered, he shall be punishable with fine which may extend to one thousand rupees.

Misuse of titles.

37. If any person, not being a registered architect, takes or uses any title or description of an architect, or uses any name, style or title containing the word "architect", he shall be punishable with fine which may extend to five hundred rupees.

Prohibition against practice by unregistered persons.

38. (*1*) After the expiry of one year from the date appointed under sub-section (2) of section 24, no person other than a registered architect shall practise the profession of an architect:

Provided that the provisions of this section shall not apply to—

(*a*) practice of the profession of an architect by a person designated as a "naval architect" or "landscape architect";

(*b*) a person who, carrying on the profession of an architect in any country outside India, undertakes the function as a consultant or designer in India for a specific project with the prior permission of the Central Government.

Explanation.—For the purposes of clause (*a*),—

(*i*) "landscape architect" means a person who deals with the design of open spaces relating to plants, trees and landscape;

(*ii*) "naval architect" means an architect who deals with design and construction of ships.

(*2*) If any person contravenes the provisions of sub-section (*1*), he shall be punishable on first conviction with fine which may extend to five hundred rupees and on any subsequent conviction with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both.

Failure to surrender certificate of registration.

39. If any person whose name has been removed from the register fails without sufficient cause forthwith to surrender his certificate of registration, he shall be punishable with fine which may extend to one hundred rupees, and, in the case of a continuing failure, with an additional fine which may extend to ten rupees for each day after the first during which he has persisted in the failure.

Cognizance of offences.

40. (*1*) No court shall take cognizance of any offence punishable under this Act, except upon complaint made by order of the Council or a person authorised in this behalf by the Council.

(*2*) No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Information to be furnished by Council and publication thereof.

41. (*1*) The Council shall furnish such reports, copies of its minutes, and other information to the Central Government as that Government may require.

(*2*) The Central Government may publish, in such manner as it may think fit, any report, copy, or other information furnished to it under this section.

Protection of action taken in good faith.

42. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council, or any officer or employee of the Council for anything which is in good faith done or intended to be done in pursuance of any of the provisions of this Act or any rule or regulation made thereunder.

Members of Council and officers and employees to be public servants.

43. The members of the Council and officers and employees of the Council shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Power to remove difficulties.

44. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(*2*) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament and the provisions of sub-section (*3*) of section 45 shall apply in respect of such order as it applies in respect of a rule made under this Act.

Power of Central Government to make rules.

45. (*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the manner in which elections under Chapter II shall be conducted;

(*b*) the particulars to be included in the register of architects under sub-section (*3*) of section 23;

(*c*) the form in which a certificate of registration is to be issued under sub-section (*7*) of section 24, sub-section (*4*) of section 26 and section 32;

(*d*) the fee to be paid under sections 24, 25, 26, 27, 28, 32 and 33;

(*e*) the conditions on which name may be restored to the register under the proviso to sub-section (*2*) of section 27;

(*f*) the manner of endorsement under sub-section (*3*) of section 27;

(*g*) the manner in which the Council shall hold an enquiry under section 30;

(*h*) the fee for supplying printed copies of the register under section 34;

(*i*) any other matter which is to be or may be provided under this Act.

(*3*) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while

it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of Council to make regulations.

46. (*1*) The Council may, with the approval of the Central Government, make regulations not inconsistent with the provisions of this Act, or the rules made thereunder to carry out the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(*a*) the management of the property of the Council;

(*b*) the summoning and holding of meetings of the Council and the Executive Committee or any other committee constituted under section 10, the times and places at which such meetings shall be held, the conduct of business thereat and the number of persons necessary to constitute a quorum;

(c) the functions of the Executive Committee or of any other committee constituted under section 10;

(*d*) the powers and duties of the President and the Vice-President of the Council;

(*e*) the courses and periods of study and of practical training, if any, to be undertaken, the subjects of examinations and standards of proficiency therein to be obtained in any college or institution for grant of recognised qualifications;

(*f*) the appointment, powers and duties of inspector;

(*g*) the standards of staff, equipment, accommodation, training and other facilities for architectural education;

(*h*) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;

(*i*) the standards of professional conduct and etiquette and code of ethics to be observed by registered architects;

(*j*) any other matter which is to be or may be provided under this Act and in respect of which no rules have been made.

THE SCHEDULE

(*See* sections 14 and 15)

PART I

QUALIFICATIONS

Bachelor Degrees in Architecture awarded by Indian Universities established by an Act of the Central or State Legislature.

National Diploma (formerly All India Diploma) in Architecture awarded by the All India Council for Technical Education.

Degree of Bachelor of Architecture (B. Arch.) awarded by the Indian Institute of Technology, Kharagpur.

Five Year full-time Diploma in Architecture of the Sir J. J. School of Art, Bombay, awarded after 1941.

Diploma in Architecture awarded by the Government College of Fine Arts and Architecture, Hyderabad, awarded after 1960.

Diploma in Architecture awarded by the School of Architecture, Ahmedabad.

PART II

QUALIFICATIONS

Australia

1. Degree of Bachelor of Architecture awarded by the University of Adelaide.

2. Degree of Bachelor of Architecture awarded by the University of Melbourne.

3. Degree of Bachelor of Architecture awarded by the University of New South Wales, Kensington.

Germany

Diploma-Inageniur awarded by the Technical Universities in the Federal Republic of Germany.

U.K.

1. Degree in Architecture awarded by the Universities of Cambridge, Durham, Liverpool, London, Manchester, Sheffield, Wales, Edinburgh, Glasgow.

2. Associateship Examination of the Royal Institute of British Architects, London (A.R.I.B.A. Examination).

U.S.A.

1. Bachelor Degree in Architecture awarded by the American Universities/Institutions, the curricula of which is accredited to the National Architectural Accrediting Board (U.S.A.).

2. Certificate of fellowship awarded by the Frank Llyod Wright Foundation, U.S.A.

Yugoslavia

Doctorate degree in Architecture awarded by the Zagreb University, Yugoslavia.

STATEMENT OF OBJECTS AND REASONS

There is a tremendous amount of building activity in consequence of the industrial development and the implementation of the various Plans. With this increase in building activity, unqualified persons are designating themselves as architects and the architectural profession is thereby seriously endangered. The various authorities, including the Indian Institute of Architects, have expressed the view that a statutory regulation is necessary to protect the public from such unqualified persons. With the passing of this legislation it would be unlawful for any person to designate himself as architect unless he has the requisite qualifications and experience. The legislation is on the lines of similar legislation obtaining in other countries.

2. The main features of the Bill are:—

(*i*) the creation of a body corporate by the name of the Architects Registration Council;

(*ii*) the vesting of the requisite powers in the Council regarding the registration of Architects;

(*iii*) the enrolment initially of persons holding a degree or diploma in architecture recognised by the Central Government or possessing other qualifications that may be prescribed by the Central Government or of persons who are proved to the satisfaction of the Council to have been engaged in practice as Architects as their principal means of livelihood for a period of not less than five years before the commencement of the proposed legislation and who are members of the Indian Institute of Architects;

(*iv*) subsequent enrolment of persons who hold degree or diploma in architecture recognised by the Central Government or who possess other qualifications that may be prescribed by the Central Government;

(*v*) the holding of enquiries relating to misconduct of registered Architects and taking suitable action;

(*vi*) prescribing standards of professional conduct and etiquette and code of ethics for registered architects.

3. The Bill also stipulates that any person who is not registered in the Register on a date to be fixed by the Central Government, shall not, except with the sanction of the Central Government, hold any appointment as an Architect under the Central or State Government or in any school, college, University or other institution which is supported wholly or partially from public or local funds or in any institution which is recognised by the Central or State Government.

4. The proposed Bill seeks to achieve the above objects.

NEW DELHI; TRIGUNA SEN.

The 18th November, 1968.

FINANCIAL MEMORANDUM

The Bill provides for the constitution of a Council under clause 3 to be known as the Architects Registration Council which will have about 30 members. The Bill has empowered the Council under clause 10 to constitute from among its members an Executive Committee of seven members. There is provision in the Bill under clause 12 for the appointment of a Registrar who will act as the Secretary of the Council as well as the Treasurer. The Bill also provides under clause 11 that the President and the Vice-President and other members of the Council shall be entitled to such fees and such allowances as may, with the previous sanction of the Central Government, be fixed by the Council. In consonance with the current practice, the members of the Council will only be drawing their travelling allowance and daily allowance and estimate is, therefore, only made to cover these items of expenditure. The Council has to meet once in every six months (*vide* clause 9) and the Executive Committee as many times as is necessary. The Registrar will also be a full-time employee of the Council. For the working of the office of the Registrar, staff will be provided. The following is the estimate of the annual expenditure required:—

	Rs.	Rs.
A. Council Meetings		
T. A. and D. A. for 30 members, average Rs. 400 per member for two meetings a year		24,000
B Executive Committee Meetings :		
Five meetings a year, average Rs. 2,000 per meeting		10,000
C. Telephone, postage and contingencies . . .		10,000
D. Rent for premises		10,000

		Rs.	Rs
E.	Salaries of staff :		
1.	Registrar-cum-Secretary (one). . .	700—1,250	12,000 p.a
2.	Head Clerk (one)	210—425	4,000 ,,
3.	Upper Division Clerk (one) . .	130—300	3,000 ,,
4.	Lower Division Clerks (two) .	110—180	3,600 ,,
5.	Stenographer (one) .	210—530	4,000 ,,
6.	Daftry (one) . . .	75—95	2,000 ,,
7	Peon (one)	70—85	
	TOTAL . .		28,000
	Dearness Allowance, City Compensatory Allowance, House Rent Allowance, Medical Expenses. . .		30,000
	Travelling Allowance		4,000
	For unforeseen items of expenditure.		3,200
	TOTAL . . .		65,200

Total expenditure Rs. 1,19,200 or Rs. 1,20,000

For office furniture, typewriter, etc., an initial non-recurring expenditure of Rs. 40,000 is expected.

On the income side, the income is from the Registration fee of Architects and an annual subscription to be paid by the Architects entering their name in the Register.

The number of regular Architects in the country is about 3,000. There are another 4,000 practising as Architects who will be eligible for registration under the provisions of this Act. The total number who may be expected to register is estimated as 5,000 and on the basis of annual subscription of Rs. 20 (twenty), the total income

is likely to be Rs. 1,00,000. The income from Registration fee is Rs. 1,00,000 (rupees one lakh).

It will thus be seen that there will be a small deficit of Rs. 20,000 and this may have to be given as a subsidy by Government.

To start with, it would be further necessary to advance an initial loan to get the Council going. The amount in question would be the amount required to pay rent and salaries, etc., for a period of six months and for the initial non-recurring expenditure for setting up the office. The total amount required would be Rs. 60,000 for a six months period and Rs. 40,000 for the initial non-recurring expenditure, *i.e.*, a sum of Rs. 1,00,000. This amount would have to be made available as an initial loan which the Institute will be able to return after it has started functioning. The amount could be met from the normal Budget provision of the Ministry.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 44 of the Bill empowers the Central Government to provide by orders published in the Official Gazette for the removal of difficulties that may arise in giving effect to its provisions.

Clause 45 of the Bill empowers the Central Government to make rules to carry out the purposes of the Bill, when enacted. The matters in respect of which such rules may be made, *inter alia*, relate to the manner in which elections are to be conducted for certain members of the Architects Registration Council; the particulars to be included in the Register of Architects; the form in which certificate of registration is to be issued; the fee to be paid to the Council by the registered architects; conditions on which a name may be restored to the Register and the manner in which the Council can hold an enquiry in the case of professional misconducts. Sub-clause (3) of this clause provides that every rule made by the Central Government shall be laid before Parliament and shall be subject to modification by Parliament.

Clause 46 of the Bill empowers the Architects Registration Council to make regulations, not inconsistent with the provisions of the Act or the rules made thereunder, to carry out the purposes of the Act with the approval of the Central Government. Such regulations may provide, *inter alia*, for the management of the property of the Council, the summoning and holding of meetings of the Council, the functions of the Executive Committee of the Council, the powers and duties of its President and Vice-President and the standards of architectural examinations and of professional conduct and etiquette.

The matters in respect of which rules and regulations can be made are generally matters of procedure and administrative detail and it is hardly practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

B. N. BANERJEE,
Secretary.

PRINTED IN INDIA BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1969